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5 Attorney for Defendant
GERALD ARMSTRONG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN

11	CHURCH OF SCIENTOLOGY INTERNATIONAL,)	No. 157 680
12	a California not-for-profit)	
12	religious corporation,)	
13	Plaintiff,)	GERALD ARMSTRONG'S
14	vs.)	OPPOSITION TO MOTION TO
15	GERALD ARMSTRONG; MICHAEL WALTON;)	STRIKE SECOND AMENDED
16	THE GERALD ARMSTRONG CORPORATION,)	<u>CROSS-COMPLAINT</u>
17	a California for-profit)	
17	corporation; DOES 1 through 100,)	
17	inclusive,)	
18	Defendants.)	Date: June 10, 1994
19	_____)	Time: 9:00 a.m.
		Dept: One
		Trial Date: 9/29/94

20 I. INTRODUCTION

21 Scientology's motion to strike does not comply with the rule
22 which requires that the material to be stricken be set forth
23 seriatim. Furthermore, the motion is so general that Armstrong is
24 given no notice as to what is the basis for the proposed striking
25 of any particular paragraph. Additionally, despite the fact that
26 the material that is the subject of the motion was pleaded in the
27 first amended complaint, Scientology did not move to strike the
28 same in conjunction with its demurrer to said first amended

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1 complaint. Finally, the motion is without substance or merit.
2 Thus, Armstrong respectfully submits that the motion should be
3 denied.

4 **II. THE NOTICE OF MOTION IS DEFICIENT**

5 California Rules of Court, Rule 329 states, in part, as
6 follows:

7 A notice of motion to strike a portion of a
8 pleading shall quote in full the portions sought to be
9 stricken except where the motion is to strike an entire
10 paragraph, cause of action, count or defense.
11 Specifications in a notice shall be numbered
12 consecutively

13 The notice of motion for the instant strike motion states, in
14 pertinent part:

15 ... will and does hereby move this Court for an order
16 striking portions of Armstrong's amended Cross-
17 Complaint, pursuant to C.C.P. §§ 436, 431.10 and
18 §425.14, on the grounds that the portions of the amended
19 Cross-Complaint listed are irrelevant, false, and/or
20 improper because they are: (a) statements of
21 evidentiary facts rather than ultimate facts; (b)
22 unnecessarily scandalous and inflammatory; (c)
23 interjected to create prejudice rather than to allege
24 claims of this cross-complainant against this cross-
25 defendant; and (d) have already been deemed by this
26 Court not to constitute a claim for abuse of process.
27 Accordingly, the Church moves that paragraphs nine (9)
28 through fifty-nine (59) of the second amended verified
cross-complainant be stricken in their entirety.

(Notice of Motion to Strike at 2:5-18)

Turning to the memorandum of points and authorities in
support of the motion in order to glean what Scientology deems to
be legally incorrect as to any given paragraph provides no further
clarity. Although Scientology cites a litany of general legal
principles which apply to strike motions as a genus, it never
makes the effort to apply any particular principle to any specific
paragraph. Thus, Armstrong is deprived of his due process right

1 to notice which in turn will deprive him of his right to have a
2 meaningful hearing on the issues, whatever they may be.

3 Nonetheless, in an effort to address the merits of the
4 motion, obfuscated as they may be, Armstrong directs his attention
5 thereto.

6 **III. PARAGRAPHS 9-59 CONTAIN ESSENTIAL**
7 **ALLEGATIONS MATERIAL TO THE CROSS-COMPLAINT**

8 To plead an abuse of process cause of action, Armstrong must
9 plead facts to support the following elements:

- 10 1. That the defendant has used a legal process in a
11 wrongful manner, not proper in the regular conduct of a
12 proceeding, to accomplish a purpose for which it was not
13 designed;
- 14 2. That the defendant acted with an ulterior motive;
- 15 3. That a willful act or threat was committed by defendant,
16 not authorized by the process and not proper in the
17 regular conduct of the proceedings;
- 18 4. That the plaintiff suffered, damage, loss or harm;
- 19 5. That such damage, loss or harm was the result of such
20 use of the legal process.

21 (BAJI 7.72 (1992 Revision))

22 Scientology claims that paragraphs 9-59 contain allegations
23 that are (1) not essential to the statement of his claim of abuse
24 of process; (2) neither pertinent nor supported by an otherwise
25 sufficient claim; (3) a demand for judgment requesting relief
26 not supported by the allegations.

27 Paragraphs 9-53 set up the factual context for what Armstrong
28 argues is Scientology's abusive of process which then is set up in
Paragraphs 54-59.

Paragraphs 9-17 set forth the background of Armstrong's
history with Scientology, particularly his access to accurate

1 information regarding L. Ron Hubbard, the founder thereof, which
2 is essential to explain why Scientology wanted, and continues to
3 want to silence him. That is, Scientology publicly lies about
4 itself and Armstrong is able to state how and in what ways it
5 perpetrates such falsehood.

6 Paragraphs 18-20 set forth the history of Armstrong's
7 successful litigation when Scientology first sued him,
8 particularly with respect to the findings of the trial court in
9 such litigation, and the fact of Armstrong's then-pending cross-
10 complaint against Scientology.

11 Paragraphs 21-22 set up some of the various litigation that
12 Michael Flynn conducted against Scientology, including his own.

13 Paragraphs 23-25, 29-34 set up the financial motivation why
14 Scientology wanted to eliminate effective witnesses against it.

15 Paragraphs 26-28 set up the manner in which Flynn was able to
16 obtain the assent of his clients, including Armstrong, to sign the
17 gag-contract with Scientology.

18 Paragraph 35 sets up the substance of such gag-contracts as
19 well as the impropriety of the manner in which Flynn conducted
20 himself in making secret side-agreements with Scientology
21 regarding Armstrong.

22 Paragraph 37 states that as part of the global settlement,
23 Flynn and other counsel executed agreements not to represent
24 persons against Scientology in the future.

25 Paragraphs 36, 38-39 set up the manner in which such
26 contracts violate public policy by manufacturing circumstances
27 whereby Scientology can disseminate manufactured falsehoods in the
28 marketplace of ideas, to obtain an unfair advantage with respect

1 to adversaries in various pending and future litigation, and to
2 control the availability of evidence harmful to it in future
3 litigation by stripping the signatories of their First Amendment
4 rights to Free Speech.

5 Paragraph 40 sets up Scientology's improper ulterior purpose
6 in obtaining Armstrong's contract.

7 Paragraphs 41-44 depict how after the settlement Scientology
8 continued to attack Armstrong and what he did in response.

9 Paragraphs 45-46 set up how Scientology first directly used
10 litigation to silence Armstrong and one judge's condemnation of
11 the agreement upon which said litigation is predicated.

12 Paragraphs 47-48 set up the underlying litigation in Los
13 Angeles in which Scientology seeks to enforce the gag-contract and
14 in which it would have to be successful in order ultimately to
15 prove liability on its complaint in this case.

16 Paragraph 49 alleges the filing of the instant litigation.

17 Paragraphs 50 and 53 set up the claim that all of
18 Scientology's litigation against Armstrong is an attempt to
19 "obstruct justice, suppress evidence, assassinate Armstrong's
20 reputation, retaliate against him for exercising his rights, use
21 the discovery process for gathering intelligence on its enemies,
22 and to make an example of Armstrong so that knowledgeable
23 witnesses who had been betrayed in the settlement with the
24 organization would continue to be scared into silence" as part of
25 Scientology's express litigation policy to use the courts to
26 destroy people.

27 Paragraphs 51-52 more specifically allege Scientology
28 improper motive in conducting the instant litigation and its

1 history of being found to so do in other litigation.

2 Paragraphs 55-59 allege certain facts required to constitute
3 an abuse of process.

4 There is nothing in said paragraphs that is irrelevant,
5 scandalous or improper. Scientology simply can't stand what
6 Armstrong says is the truth about how it has used and is
7 attempting to abuse the legal system. Indeed, contrary to
8 Scientology's generalized assertions, no inflammatory terms or
9 religious invective is used and no such language, not to mention a
10 paragraph wherein such language is used, has been identified.

11 Although the facts that Armstrong has alleged do extend back
12 in time, they are not remote in the legal sense because said facts
13 lay out the context for Scientology's relationship with Armstrong
14 and are material to the basis for what Armstrong says is
15 Scientology's desire to destroy him. Armstrong is not claiming
16 that these facts independently give rise to tort liability for
17 abuse of process. He does say, however, that what he alleges is
18 the current abuse of process could not be understood without
19 having alleged the context in which it is taking place.

20 Simply because Scientology's motive and execution of its
21 scheme is immoral, evil and destructive of justice does not make
22 Armstrong's identification thereof "riddled with improper and
23 immaterial invective." (Memorandum in Support at 3:24-25)

24 Armstrong has stated ultimate facts. In pleading there is a
25 fine line between stating too many facts and too few, with the
26 latter circumstance having the likelihood of being found to have
27 stated facts insufficient to state a claim. In his cross-
28 complaint Armstrong states enough facts to make his theory clear

1 and to support it. He doesn't state more than that.

2 Scientology's point that said facts will not support a claim
3 for abuse of process in this action misstates the record. The
4 Court ruled on March 25, 1994 that the facts alleged all went to
5 the element of "ulterior purpose," an element of the abuse of
6 process cause of action, but not to the "wilful act" element,
7 which he found lacking.

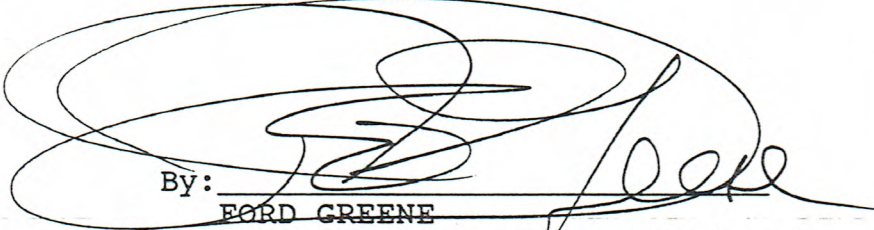
8 Finally, the paragraphs which Scientology asks the court to
9 strike were present in Armstrong's first amended cross-complaint
10 to which Scientology made no such motion. In light of the facts
11 that no such motion was made, and the Court found such facts to be
12 adequate allegations of "ulterior purpose," it is too late to
13 litigate this motion as the legitimacy of such facts has already
14 been determined.

15 **IV. CONCLUSION**

16 Based upon the arguments set forth above, it is submitted
17 that Scientology's motion to strike should be denied.

18 DATED: June 3, 1994

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BY: 
FORD GREENE
Attorney for Cross-Complainant
GERALD ARMSTRONG

1 PROOF OF SERVICE

2 I am employed in the County of Marin, State of California. I
3 am over the age of eighteen years and am not a party to the above
4 entitled action. My business address is 711 Sir Francis Drake
5 Boulevard, San Anselmo, California. I served the following
6 documents: GERALD ARMSTRONG'S OPPOSITION TO MOTION TO STRIKE
7 SECOND AMENDED CROSS-COMPLAINT

8 on the following person(s) on the date set forth below, by placing
9 a true copy thereof enclosed in a sealed envelope with postage
10 thereon fully prepaid to be placed in the United States Mail at
11 San Anselmo, California:

12 Andrew Wilson, Esquire
13 WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028
(By Telecopier)

14
15 MICHAEL WALTON
16 P.O. Box 751
San Anselmo, California 94960

17 [x] (By Mail) I caused such envelope with postage thereon
18 fully prepaid to be placed in the United
States Mail at San Anselmo, California.

19 [x] (State) I declare under penalty of perjury under the
20 laws of the State of California that the above
is true and correct.

21 DATED: June 3, 1994

